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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 001750

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DOE FOR CAROLYN GAY

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TAGS: [PGOV](#) [KDEM](#) [KCOR](#) [KJUS](#) [NI](#)  
SUBJECT: SENATE PRESIDENT AT RISK OF LOSING SEAT

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Classified By: Charge d'Affaires Robert Gribbin for reasons 1.4.(b&d).

11. (C) SUMMARY. Senate President David Mark is at risk of losing his seat to the opposition candidate from the ANPP, Alhaji Usman Abubakar. Abubakar filed a petition to have Mark's victory annulled and based on the evidence submitted and the reputation of the presiding judge, there is a good possibility he will succeed. The Election Tribunal taking place in Benue State has become an important case for Nigeria due to the fact that the position of Senate President is third in line to the Presidency. Continuously attracting large crowds that pack the small Makurdi courthouse and surrounding area, this hearing is also becoming a model for Nigeria's judiciary by demonstrating due process. The pretrial phase concluded on August 8 and the substantive trial will begin on August 21 with a final determination announced within thirty days of commencement. Nullifying Mark's election could serve the dual purpose of both demonstrating Yar'Adua's commitment to rule of law and further distancing himself from former President Obasanjo.  
END SUMMARY.

12. (C) According to observers and legal experts, it is likely that Senate President David Mark will lose his senatorial seat to the ANPP opposition candidate Alhaji Usman Abubakar. Counsel for the petitioner, Chief S.A. Orkuma, told PolOff that "from evidence tendered at the tribunal, it will be difficult for David Mark to win the case no matter how perverse the judge is." Fortunately for the petitioner it appears the judge is not perverse at all, but rather highly regarded as "completely incorruptible" by colleagues and interlocutors. Additionally, many legal experts attending the tribunal alluded to the fact that Senate President Mark had unsuccessfully attempted to influence the Judge with financial incentives.

13. (C) David Mark's senatorial victory was questionable from the very beginning. After the April 21 Presidential and National Assembly elections the INEC Officer in the Benue South district called for cancellation of the results in two of the nine local government areas due to "massive and obvious irregularities." In both the contested districts, Okpoku and Agatu, there was a minimum of three times the number of votes as registered voters with Mark declared the winner in those districts. Results in the seven remaining

districts however indicated Alhaji Usman Abubakar had won a majority of the votes. The situation attracted the attention of former president Obasanjo who instructed that David Mark be announced as winner of the election despite the irregularities. The Resident Electoral Commissioner in Benue, following INEC guidelines, refused to declare Mark the winner and the announcement was subsequently made by the INEC headquarters in Abuja. This was the only Senatorial election where results were not declared by the state.

14. (C) Corroborating the fact that Mark may have been awarded his seat unfairly is the fact that his Lead Counsel, Damian Dodo (SAN), advised an out of court settlement after failing to have the case thrown out in a preliminary objection to the petition. Dodo filed the motion objecting to the petition based on "lack of merit," but the tribunal ruled the petition should be sustained and all evidence and relevant documentation from INEC was admitted by the tribunal. Since that ruling, Dodo has refused to appear in person at any of the tribunal hearings.

15. (C) This Election Petition Tribunal has become a high profile case for both Benue State and Nigeria as a whole. Stakeholders in Benue's Idoma-speaking area are concerned about one of their own losing such a lucrative position. Tensions between the Idoma and Tiv people of Benue have been an issue for many years and there is concern that ousting Mark could instigate additional feuding and possible violence. Adding to the attention focused on this case is the fact that Senator Mark, as Senate President, is third in line to the Presidency of Nigeria, and nullifying his victory would disrupt the apex of the new federal administration.

16. (C) Perhaps most importantly, this petition has become a test case for the Justice system in Nigeria putting its legitimacy and due process in the spotlight. President

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Yar'Adua has insisted that no one from his administration, either at the national or state level, interfere with the affairs of the judiciary. Despite PDP party leaders and Idoma traditional rulers trying to pressure Abubakar into dropping his petition, most officials appear to have adhered to Yar'Adua's directive. PolOff witnessed this firsthand when State Assembly Speaker Terseer Tumba declined to enter the courthouse with her so as not to give the appearance of trying to sway opinion.

17. (SBU) The pretrial portion of the petition concluded on August 8, with the court finding sufficient evidence and documentation for the case to move forward. The hearing has been set for August 21 and a final judgment is likely to be determined within thirty days. There has been no word on how the transition of power will occur if indeed Mark's election is nullified.

18. (C) COMMENT: Though Mission contacts in other tribunal cases have presented a process destined for failure, this appears one of the few cases in which justice may likely be served. The consensus among observers with whom PolOff met as to the judge's incorruptibility and the overwhelming evidence against Mark's election may well result in an upset that will reach all the way to the number three member of the Administration. A decision to overturn Mark's victory, if upheld by the Yar'Adua administration, would be a strong signal of the Administration's commitment to rule of law. As well, with Mark considered one of Obasanjo's boys placed in the Senate Presidency to ensure continued influence, a tribunal decision overturning the election would play well into Yar'Adua's attempts to disentangle from the former president. It may be for just this reason that a judge known so widely as incorruptible was appointed to oversee this tribunal in particular. An overturning of Mark's election could serve the purpose of both bolstering Yar'Adua's public image and further removing Obasanjo from the apex of national power. END COMMENT.

